THE HONOURABLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No :25804 of 2006

DATED:10-04-2007

BETWEEN:

Mekala Venkata Rangarao.

..... PETITIONER

AND

The Deputy Commissioner for Prohibition & Excise,
Vijayawada,
Krishna District & another.

.....RESPONDENTS

ORDER:

Heard the learned counsel for the petitioner as well as the learned Government Pleader for Prohibition & Excise appearing for the respondents.

2. Petitioner seeks a writ of mandamus declaring the order of the 2nd respondent in directing the petitioner to close the entrance on the northern side of the premises, granted vide Licence No.21/2006-07, dated 30-10-1006, as illegal and arbitrary.

3. Petitioner states that he was the licencee, bearing Licence No.108/-01-02, in respect of the premises bearing No.11/1155 situated at Chemmanagiripet, Machilipatnam town, Krishna District, running a bar under the name and style 'Rajeswari Bar & Restaurant' from 2001 onwards and after the A.P.Excise (Grant of Licence of selling by Bar and conditions of licence) Rules, 2005 (for brevity, 'the rules') came into force applied for grant of 2B licence (bar) at the same premises bearing No.11/1155, Chemmanagiripet, Machilipatnam town under the name and style 'M/s B.K.V.V.Restaurant' for the year, 2006-07. Pursuant to the said application, dated 21-06-2006, the Commissioner of Prohibition & Excise, Hyderabad vide proceedings, dated 01-08-2006, issued prior clearance for establishment of 2B licence in favour of the petitioner, but *in spite* of the prior clearance

petitioner was not granted licence by the 2nd respondent-Superintendent, Prohibition & Excise and therefore, the petitioner is constrained to file W.P.No.16935 of 2006 which was disposed of on 18-08-2006 directing the 2nd respondent to take steps in terms of the proceedings of the Commissioner, Prohibition & Excise, dated 17-08-2006, for the grant of licence in favour of the petitioner. *In spite* of the said direction also, licence was not granted and therefore the petitioner filed Contempt Case No.913 of 2006 and pending the same the application of the petitioner was rejected by order, dated 09-10-2006, on the ground that he has not produced D & O Trade licence and NOC from the Commissioner of Machilipatnam municipality as required under Rule 4 and 6(5) of the Rules. Petitioner filed W.P.No.21422 of 2006 and basing on the interim direction issued by this Court the 2nd respondent granted licence in L.No.21/06-07 in Form 2B, dated 30-10-2006, to the petitioner for running the bar namely
'M/s B.K.V.V. Bar & Restaurant' in the said premises bearing No.11-1155 Chemmanagiripet, Machilipatnam, and the said licence was granted subject to the orders in W.P.No.21422 of 2006 pending on the file of this Court.

4. Learned counsel appearing for the petitioner submits that the petitioner is not permitted to open the entrance from the northern side of the municipal road of the said licenced premises and questioning the same the present Writ Petition has been filed.

5. Counter has been filed stating that on submission of the blue print plan of the proposed bar premises bearing No.11-1155 in

which only one entrance is shown from the west side, the same was approved and licence was granted in favour of the petitioner in form-2B.

6. As per Rule 13 of the said Rules no change or alteration of the licenced premises shall be made during the licence period without the prior approval of the Deputy Commissioner.

7. Admittedly, petitioner has not filed any application for alteration of the licenced premises. Therefore, I am of the opinion that without making any representation for change of the entrance the petitioner is not entitled to seek a writ of mandamus.

8. Having regard to the facts and circumstances of the case, the Writ Petition is dismissed with a liberty to the petitioner to file a representation before the 1st respondent and on such representation, filed if any, the same may be considered and forwarded to the 2nd respondent for passing necessary orders in accordance with the said rules. The said exercise shall be completed within three weeks from the date of receipt of the representation from the petitioner. No order as to costs.

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V.ESWARAIAH, J

10th April, 2007
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